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NOTE: CHANGES MADE BY THE COURT

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

11 LENNOX CARWASH, INC., a
12 Delaware corporation; and LENNOX
13 CARWASH PROPERTIES, LLC., a
14 Delaware limited liability company,

15 Plaintiffs,

16 vs.

17 AMCO INSURANCE COMPANY, an
18 Iowa corporation; and DOES 1 through
19 10, inclusive,

20 Defendants.

Case No. 2:23-cv-03746-RGK-JPR

Assigned to the Hon. Gary Klausner
Courtroom 850

Magistrate Judge Jean P. Rosenbluth

**STIPULATED PROTECTIVE
ORDER**

DISCOVERY MATTER

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Complaint Filed: April 13, 2023
Removal Date: May 16, 2023

1. INTRODUCTION

1.1. PURPOSES AND LIMITATIONS

Discovery in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 12.3 below, that this Order does not entitle them to file Confidential Information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the Court to file material under seal.

1.2 GOOD CAUSE STATEMENT

This action is likely to involve discovery of financial, commercially sensitive, and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecuting or defending this litigation would be warranted. Such confidential and proprietary materials and information may consist of, among other things, customer and pricing lists and other valuable confidential business or financial information (including information implicating privacy rights of third parties), commercial property insurance claim handling best practices, insurance underwriting file and proprietary documentation, information otherwise generally unavailable to the public, or information which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of

1 discovery materials, to adequately protect information the parties are entitled to keep
2 confidential, to ensure that the parties are permitted reasonable necessary uses of
3 such material in preparation for and in the conduct of trial, to address their handling
4 at the end of the litigation, and serve the ends of justice, a protective order for such
5 information is justified in this matter. It is the intent of the parties that information
6 will not be designated as confidential for tactical reasons and that nothing be so
7 designated without a good faith belief that it has been maintained in a confidential,
8 non-public manner, and there is good cause why it should not be part of the public
9 record of this case.”

10 2. DEFINITIONS

11 2.1. Action: this pending federal lawsuit.

12 2.2. Challenging Party: a Party or Nonparty that challenges the designation
13 of information or items under this Order.

14 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored, or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c) and as specified above in the
17 Good Cause Statement.

18 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5. Designating Party: a Party or Nonparty that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 2.6. Disclosure or Discovery Material: all items or information, regardless of
24 the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this matter.

27 2.7. Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as

1 an expert witness or as a consultant in this action.

2 2.8. House Counsel: attorneys who are employees of a party to this Action.

3 House Counsel does not include Outside Counsel of Record or any other outside
4 counsel.

5 2.9. Nonparty: any natural person, partnership, corporation, association, or
6 other legal entity not named as a Party to this Action.

7 2.10. Outside Counsel of Record: attorneys who are not employees of a Party
8 to this Action but are retained to represent or advise a Party to this Action and have
9 appeared in this Action on behalf of that Party, or are affiliated with a law firm which
10 has appeared on behalf of that Party, and includes support staff.

11 2.11. Party: any Party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staff).

14 2.12. Producing Party: a Party or Nonparty that produces Disclosure or
15 Discovery Material in this Action.

16 2.13. Professional Vendors: persons or entities that provide litigation support
17 services (for example, photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14. Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL.”

22 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material
23 from a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also any information copied or extracted
27 from Protected Material; all copies, excerpts, summaries, or compilations of Protected
28 Material; and any testimony, conversations, or presentations by Parties or their

1 Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of the
3 trial judge. This Order does not govern the use of Protected Material during trial.

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order will remain in effect until a Designating Party agrees otherwise
7 in writing or a court order otherwise directs. Final disposition is the later of (1)
8 dismissal of all claims and defenses in this Action, with or without prejudice, or (2)
9 final judgment after the completion and exhaustion of all appeals, rehearings,
10 remands, trials, or reviews of this Action, including the time limits for filing any
11 motions or applications for extension of time under applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1. Each Party or Nonparty that designates information or items for
14 protection under this Order must take care to limit any such designation to specific
15 material that qualifies under the appropriate standards. To the extent practicable, the
16 Designating Party must designate for protection only those parts of material,
17 documents, items, or oral or written communications that qualify so that other
18 portions of the material, documents, items, or communications for which protection
19 is not warranted are not swept unjustifiably within the ambit of this Order.

20 Indiscriminate or routinized designations are prohibited. Designations that are
21 shown to be clearly unjustified or that have been made for an improper purpose (for
22 example, to unnecessarily encumber the case-development process or to impose
23 unnecessary expenses and burdens on other parties) may expose the Designating
24 Party to sanctions.

25 If it comes to a Designating Party's attention that information or items it
26 designated for protection do not qualify for that level of protection, that Designating
27 Party must promptly notify all other Parties that it is withdrawing the inapplicable
28 designation.

1 5.2. Except as otherwise provided in this Order, Disclosure or Discovery
 2 Material that qualifies for protection under this Order must be clearly so designated
 3 before the material is disclosed or produced.

4 Designation in conformity with this Order requires the following:

5 (a) for information in documentary form (for example, paper or
 6 electronic documents but excluding transcripts of depositions or other pretrial or
 7 trial proceedings), the Producing Party must affix at a minimum the legend
 8 “CONFIDENTIAL” to each page that contains Protected Material. If only a portion
 9 or portions of the material on a page qualify for protection, the Producing Party
 10 should to the extent practicable clearly identify the protected portion(s) (for
 11 example, by making appropriate markings in the margins).

12 A Party or Nonparty that makes original documents available for inspection
 13 need not designate them for protection until after the inspecting Party has indicated
 14 which documents it would like copied and produced. During the inspection and
 15 before the designation, all material made available for inspection must be treated as
 16 “CONFIDENTIAL.” After the inspecting Party has identified the documents it
 17 wants copied and produced, the Producing Party must determine which documents,
 18 or portions thereof, qualify for protection under this Order. Then, before producing
 19 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
 20 legend to each page that contains Protected Material. If only a portion or portions of
 21 the material on a page qualify for protection, the Producing Party should to the extent
 22 practical clearly identify the protected portion(s) (for example, by making
 23 appropriate markings in the margins).

24 (b) for testimony given in depositions, the Designating Party must
 25 identify the Disclosure or Discovery Material that is protected on the record, before
 26 the close of the deposition.

27 (c) for information produced in some form other than documentary
 28 and for any other tangible items, the Producing Party must affix in a prominent place

1 on the exterior of the container or containers in which the information is stored the
2 legend “CONFIDENTIAL.” If only a portion or portions of the information warrant
3 protection, the Producing Party, to the extent practicable, must identify the protected
4 portion(s).

5 5.3. If timely corrected, an inadvertent failure to designate qualified
6 information or items does not, standing alone, waive the Designating Party’s right to
7 secure protection under this Order for that material. On timely correction of a
8 designation, the Receiving Party must make reasonable efforts to assure that the
9 material is treated in accordance with the provisions of this Order.

10 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1. Any Party or Nonparty may challenge a designation of confidentiality at
12 any time consistent with the Court’s scheduling order.

13 6.2. The Challenging Party must initiate the dispute-resolution process (and,
14 if necessary, file a discovery motion) under Local Rule 37.

15 6.3. The burden of persuasion in any such proceeding is on the Designating
16 Party. Frivolous challenges, and those made for an improper purpose (for example,
17 to harass or impose unnecessary expenses and burdens on other parties), may expose
18 the Challenging Party to sanctions. Unless the Designating Party has waived or
19 withdrawn the confidentiality designation, all parties must continue to afford the
20 material in question the level of protection to which it is entitled under the Producing
21 Party’s designation until the Court rules on the challenge.

22 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

23 7.1. Receiving Party may use Protected Material that is disclosed or
24 produced by another Party or by a Nonparty in connection with this Action only for
25 prosecuting, defending, or attempting to settle this Action. Such Protected Material
26 may be disclosed only to the categories of people and under the conditions described
27 in this Order. When the Action has been terminated, a Receiving Party must comply
28 with the provisions of Section 13 below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a manner sufficiently secure to ensure that access is limited to the
3 people authorized under this Order.

4 7.2. Unless otherwise ordered by the Court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item
6 designated “CONFIDENTIAL” only to the following people:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action,
8 as well as employees of that Outside Counsel of Record to whom it is reasonably
9 necessary to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel)
11 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to
13 whom disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the Court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and
18 Professional Vendors to whom disclosure is reasonably necessary for this Action
19 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
20 A);

21 (g) the author or recipient of a document containing the information
22 or a custodian or other person who otherwise possessed or knew the information;

23 (h) during their depositions, witnesses and attorneys for witnesses to
24 whom disclosure is reasonably necessary, provided that the deposing party requests
25 that the witness sign the form attached as Exhibit A hereto and the witnesses will
26 not be permitted to keep any confidential information unless they sign the form,
27 unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
28 transcribed deposition testimony or exhibits to depositions that reveal Protected

1 Material may be separately bound by the court reporter and may not be disclosed to
2 anyone except as permitted under this Order; and
3 (i) any mediator or settlement officer, and their supporting
4 personnel, mutually agreed on by any of the Parties engaged in settlement
5 discussions or appointed by the Court.

6 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
7 **OTHER LITIGATION**

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL,” that Party must:

11 (a) promptly notify in writing the Designating Party. Such
12 notification must include a copy of the subpoena or court order unless prohibited by
13 law;

14 (b) promptly notify in writing the party who caused the subpoena or
15 order to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Protective Order. Such notification must include
17 a copy of this Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with
21 the subpoena or court order should not produce any information designated in this
22 action as “CONFIDENTIAL” before a determination on the protective-order request
23 by the relevant court unless the Party has obtained the Designating Party’s
24 permission. The Designating Party bears the burden and expense of seeking
25 protection of its Confidential Material, and nothing in these provisions should be
26 construed as authorizing or encouraging a Receiving Party in this Action to disobey
27 a lawful directive from another court.

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1 9. A NONPARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
2 IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced
4 by a Nonparty in this Action and designated as "CONFIDENTIAL." Such
5 information is protected by the remedies and relief provided by this Order. Nothing
6 in these provisions should be construed as prohibiting a Nonparty from seeking
7 additional protections.

8 (b) In the event that a Party is required by a valid discovery request
9 to produce a Nonparty's Confidential Information in its possession and the Party is
10 subject to an agreement with the Nonparty not to produce the Nonparty's
11 Confidential Information, then the Party must

12 (1) promptly notify in writing the Requesting Party and the
13 Nonparty that some or all of the information requested is subject to a confidentiality
14 agreement with a Nonparty;

15 (2) promptly provide the Nonparty with a copy of this Order,
16 the relevant discovery request(s), and a reasonably specific description of the
17 information requested; and

18 (3) make the information requested available for inspection by
19 the Nonparty, if requested.

20 (c) If the Nonparty fails to seek a protective order within 21 days of
21 receiving the notice and accompanying information, the Receiving Party may
22 produce the Nonparty's Confidential Information responsive to the discovery
23 request. If the Nonparty timely seeks a protective order, the Receiving Party must
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Nonparty before a ruling on the protective-order
26 request. Absent a court order to the contrary, the Nonparty must bear the burden and
27 expense of seeking protection of its Protected Material.

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1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Order, the Receiving Party must immediately notify the Designating Party in writing
5 of the unauthorized disclosures, use its best efforts to retrieve all unauthorized copies
6 of the Protected Material, inform the person or people to whom unauthorized
7 disclosures were made of the terms of this Order, and ask that person or people to
8 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto
9 as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B).

16 12. MISCELLANEOUS

17 12.1. Nothing in this Order abridges the right of any person to seek its
18 modification by the Court.

19 12.2. By stipulating to the entry of this Order, no Party waives any right it
20 otherwise would have to object to disclosing or producing any information or item
21 on any ground not addressed in this Order. Similarly, no Party waives any right to
22 object on any ground to use in evidence of any of the material covered by this
23 Order.

24 12.3. A Party that seeks to file under seal any Protected Material must
25 comply with Civil Local Rule 79-5. Protected Material may be filed under seal only
26 pursuant to a court order authorizing the sealing of the specific Protected Material at
27 issue. If a Party's request to file Protected Material under seal is denied, then the
28 Receiving Party may file the information in the public record unless otherwise

1 instructed by the Court.

2 13. FINAL DISPOSITION

3 After the final disposition of this Action, as defined in paragraph 4, within 60
4 days of a written request by the Designating Party, each Receiving Party must return
5 all Protected Material to the Producing Party or destroy such material. As used in this
6 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
7 summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
9 must submit a written certification to the Producing Party (and, if not the same person
10 or entity, to the Designating Party) by the 60-day deadline that identifies (by category,
11 when appropriate) all the Protected Material that was returned or destroyed and
12 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
13 summaries, or any other format reproducing or capturing any of the Protected
14 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
15 copy of all pleadings; motion papers; trial, deposition, and hearing transcripts; legal
16 memoranda; correspondence; deposition and trial exhibits; expert reports; attorney
17 work product; and consultant and expert work product even if such materials contain
18 Protected Material. Any such archival copies that contain or constitute Protected
19 Material remain subject to this Order as set forth in Section 4 (DURATION).

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1 14. SANCTIONS

2 Any willful violation of this Order may be punished by civil or criminal
3 contempt, financial or evidentiary sanctions, reference to disciplinary authorities, or
4 other appropriate action at the discretion of the Court.

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: December 28, 2023

PASICH LLP

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9 By: /s/ L. Noelle Malindzak

10 L. Noelle Malindzak
11 Attorneys for Plaintiffs
12 LENNOX CARWASH, INC.
13 and LENNOX CARWASH
14 PROPERTIES, LLC

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DATED: December 28, 2023

GORDON REES SCULLY
17 MANSUKHANI LLP

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22 By: /s/ Scott P. Ward

23 Scott P. Ward
24 Attorneys for Defendant
25 AMCO INSURANCE
26 COMPANY

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ATTESTATION

22 Pursuant to L.R. 5-4.3.4, I hereby attest that Defendant's attorneys have
23 reviewed this Stipulated Protective Order and concur in its content and authorize its
24 filing. I further attest that I have on file documentation of their authorization.

25 DATED: December 28, 2023

/s/ L. Noelle Malindzak

26 L. Noelle Malindzak
27 Attorneys for Plaintiff

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1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

2 DATED: January 5, 2024

jean rosenbluth

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4 **Hon. Jean P. Rosenbluth**

5 United States Magistrate Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [full name], of _____ [full address], declare under
4 penalty of perjury that I have read in its entirety and understand the Stipulated
5 Protective Order that was issued by the U.S. District Court for the Central District of
6 California on [date] in the case of Lennox Carwash, Inc. v. AMCO Insurance
7 Company, etc., Case No. 2:23-cv-03746-RGK-JPR. I agree to comply with and to
8 be bound by all terms of this Stipulated Protective Order, and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and
10 punishment, including contempt. I solemnly promise that I will not disclose in any
11 manner any information or item that is subject to this Stipulated Protective Order to
12 any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the U.S. District Court for the
14 Central District of California for the purpose of enforcing the terms of this
15 Stipulated Protective Order, even if such enforcement proceedings occur after
16 termination of this action. I hereby appoint _____ [full name] of _____ [full
17 address and telephone number] as my California agent for service of process in
18 connection with this action or any proceedings related to enforcement of this
19 Stipulated Protective Order.

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21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 Signature: _____

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